

1 **S. 384**
2 **Secretary Proposal**
3 **Adopted by the subcommittee - 10-28-09**
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7 **A BILL**
8

9 Be it enacted by the General Assembly of the State of South
10 Carolina:

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12 SECTION 1. Section 1-30-10(B) of the 1976 Code is amended to
13 read:

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15 “(B)(1) The governing authority of each department shall be either:
16 (i) a director, and in the case of the Department of Commerce, the
17 secretary, who must be appointed by the Governor with the advice
18 and consent of the Senate, subject to removal from office by the
19 Governor pursuant to provisions of Section 1-3-240;

20 (ii) a seven member board to be appointed and constituted in a
21 manner provided for by law;

22 (iii) in the case of the Department of Agriculture and the
23 Department of Education, the State Commissioner of Agriculture
24 and the State Superintendent of Education, respectively, elected to
25 office under the Constitution of this State; or

26 (iv) in the case of the Department of Transportation, a seven
27 member commission constituted in a manner provided by law, and
28 a Secretary of Transportation appointed by and serving at the
29 pleasure of the Governor.

30 (v) in the case of the Department of Health and Environmental
31 Control, a seven member board constituted in a manner provided
32 by law, and a Secretary of Health and Environmental Control
33 appointed by and serving at the pleasure of the Governor.”
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37 SECTION 2. Chapter 1 Title 44 of the 1976 Code is amended by
38 adding:

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40 “Section 44-1-10. For the purposes of this chapter, the
41 following words, phrases, and terms are defined as follows:

- 1 (1) "Board" means the administrative and governing authority of
2 the Department of Health and Environmental Control.
3 (2) "Department" means the Department of Health and
4 Environmental Control (DHEC).
5 (3) "Secretary of Health and Environmental Control" means the
6 Chief Administrative Officer of the Department of Health and
7 Environmental Control.

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10 SECTION 3. Section 44-1-20 of the 1976 Code is amended to
11 read:

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13 ~~"Section 44-1-20. There is hereby created the South Carolina~~
14 ~~Department of Health and Environmental Control which shall be~~
15 ~~administered under the supervision of the South Carolina Board of~~
16 ~~Health and Environmental Control. The board shall consist of~~
17 ~~seven members, one from each congressional district, and one~~
18 ~~from the State at large to be appointed by the Governor, upon the~~
19 ~~advice and consent of the Senate. The member who is appointed at~~
20 ~~large shall serve as the chairman of the board. The Governor may~~
21 ~~remove the chairman of the board pursuant to Section 1-3-240(B);~~
22 ~~however, the Governor may only remove the other board members~~
23 ~~pursuant to Section 1-3-240(C). The terms of the members shall~~
24 ~~be for four years and until their successors are appointed and~~
25 ~~qualify, except that of the original appointees, three shall be~~
26 ~~appointed for two years and four shall be appointed for four years.~~
27 ~~All vacancies shall be filled in the manner of the original~~
28 ~~appointment for the unexpired portion of the term only. In making~~
29 ~~these appointments, race, gender, and other demographic factors~~
30 ~~should be considered to ensure nondiscrimination, inclusion, and~~
31 ~~representation to the greatest extent possible of all segments of the~~
32 ~~population of the State; however, consideration of these factors in~~
33 ~~making an appointment in no way creates a cause of action or basis~~
34 ~~for an employee grievance for a person appointed or for a person~~
35 ~~who fails to be appointed. There is hereby created the South~~
36 Carolina Department of Health and Environmental Control which
37 shall be administered under the Secretary of Health and
38 Environmental Control. The Governor shall appoint, with the
39 advice and consent of the Senate, a Secretary of Health and
40 Environmental Control who shall serve at the pleasure of the
41 Governor. A person appointed to this position shall possess sound
42 moral character, superior knowledge and experience concerning
43 the promotion and protection of the health of the public and the

1 environment, and proven administrative ability. The secretary is
2 subject to removal by the Governor pursuant to the provisions of
3 Section 1-3-240(B). The Secretary shall receive such
4 compensation as may be established under the provisions of
5 Section 8-11-160 and for which funds have been authorized in the
6 general appropriations act.”

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9 SECTION 4. Section 44-1-30 of the 1976 Code is amended to
10 read:

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12 “Section 44-1-30. The Board shall meet at least quarterly and
13 the members shall receive such compensation for their services as
14 is provided by law for members of boards and commissions. The
15 secretary will be vested with the duty and authority to oversee,
16 manage, and control the operation, administration, and
17 organization of the department. The secretary will serve as the
18 primary point of accountability, reporting directly to the Governor,
19 for the management of environmental protection and public health
20 programs.”

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23 SECTION 5. Section 44-1-40 of the 1976 Code is amended to
24 read:

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26 “Section 44-1-40. The board shall select a director for the
27 department who shall serve a four year term and who shall have
28 such authority and perform such duties as may be directed by the
29 board. The salary of the director shall be fixed by the board, upon
30 approval of the State Budget and Control Board. For any vacancy
31 occurring in the office of director on or after February 1, 1995, the
32 board, after consultation with and approval by the Governor, must
33 submit the name of its appointee to the Senate for the Senate’s
34 advice and consent. On or after February 1, 1995, the board may
35 remove a director only after consultation with and approval by the
36 Governor. (A) There is hereby created a South Carolina Board of
37 Health and Environmental Control. The board shall consist of
38 seven members, one from each congressional district, and one
39 from the State at large to be appointed by the Governor, upon the
40 advice and consent of the Senate. The member who is appointed at
41 large shall serve as the chairman of the board. The candidates for
42 appointment to the Board shall meet the qualifications contained in
43 subsection (C) in order to be eligible for appointment by the

1 Governor. The Governor may remove the chairman of the board
2 pursuant to Section 1-3-240(B); however, the Governor may only
3 remove the other board members pursuant to Section 1-3-240(C).
4 (B) The terms of the members shall be for four years and until their
5 successors are appointed and qualify. All vacancies shall be filled
6 in the manner of the original appointment for the unexpired portion
7 of the term only.
8 (C) The qualifications that each board member must possess,
9 include, but are not limited to:
10 (1) a baccalaureate or more advanced degree from:
11 (a) a recognized institution of higher learning requiring face-to-
12 face contact between its students and instructors prior to
13 completion of the academic program;
14 (b) an institution of higher learning that has been accredited by a
15 regional or national accrediting body; or
16 (c) an institution of higher learning chartered before 1962; and
17 (2) a background of at least five years in any one or any
18 combination of the following fields of expertise:
19 (a) public health;
20 (b) environmental issues;
21 (c) law;
22 (d) finance, economic, or statistics;
23 (e) engineering;
24 (f) management
25 (D) In making these appointments, race, gender, and other
26 demographic factors should be considered to ensure
27 nondiscrimination, inclusion, and representation to the greatest
28 extent possible of all segments of the population of the State;
29 however, consideration of these factors in making an appointment
30 in no way creates a cause of action or basis for an employee
31 grievance for a person appointed or for a person who fails to be
32 appointed.
33 (E) The board shall meet at the department's administrative
34 headquarters at least quarterly and the members shall receive such
35 compensation for their services as is provided by law for members
36 of boards and commissions."

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39 SECTION 6. Section 44-1-50 of the 1976 Code, as last amended
40 by Act 387 of 2006, is further amended to read:

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42 "Section 44-1-50. (A) The board ~~may~~ shall conduct such
43 ~~administrative final~~ final reviews ~~as may be required by law,~~ as

1 considered necessary by the board to render a final agency
2 determination in matters involving the issuance, denial, renewal or
3 revocation of permits, licenses, or other actions of the department
4 which may give rise to a contested case pursuant to Chapter 23 of
5 Title 1.

6 (B) The board secretary, in consultation with the board shall
7 provide for the administrative organization of the department and
8 shall consolidate and merge existing duties, functions, and officers
9 of the former agencies as may be necessary for economic and
10 efficient administration. Provided, however, that the board may
11 appoint such advisory boards as it considers necessary ~~to carry out~~
12 ~~the functions of Sections 44-1-10 to 44-1-70.~~ Members of the
13 department's advisory boards may receive mileage, per diem and
14 subsistence, and there shall be provided a compensation for their
15 services as provided by the law for members of boards and
16 commissions.

17 (C) The board shall promulgate, by regulation, procedures not
18 inconsistent with federal laws and in accordance with state law.

19 (D) The board shall approve the department's annual budget.

20 (E) The board shall biennially approve the South Carolina Health
21 Plan as submitted by the Health Planning Committee created
22 pursuant to Section 44-7-180.

23 (G) The board shall have any other rights, duties, obligations or
24 responsibilities as provided by law."

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27 SECTION 7. Chapter 1, Title 44 of the 1976 Code is amended by
28 adding:

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30 "Section 44-1-55. (A) The board shall appoint a chief internal
31 auditor and other professional, administrative, technical, and
32 clerical personnel as the board determines to be necessary in the
33 proper discharge of the board's duties and responsibilities provided
34 by law. The board also shall provide professional, administrative,
35 technical, and clerical personnel, as the board determines to be
36 necessary, for the chief internal auditor to properly discharge his
37 duties and responsibilities authorized by the board or provided by
38 law. Except as otherwise provided, any employees hired pursuant
39 to this section shall serve at the pleasure of the board.

40 (B)(1) The chief internal auditor shall serve for a term of four
41 years and may be removed by the board only for malfeasance,
42 misfeasance, incompetency, absenteeism, conflicts of interest,
43 misconduct, persistent neglect of duty in office, or incapacity. The

1 chief internal auditor shall have a baccalaureate or more advanced
2 degree in accounting or finance and possess any other experience
3 the board may require. The chief internal auditor shall establish,
4 implement, and maintain the exclusive internal audit function of all
5 departmental activities. The board shall set the salary for the chief
6 internal auditor as allowed by statute or applicable law.

7 (2) The audits performed by the chief internal auditor must comply
8 with recognized governmental auditing standards. The department
9 and any entity contracting with the department must fully
10 cooperate with the chief internal auditor in the discharge of his
11 duties and responsibilities and must timely produce all books,
12 papers, correspondence, memoranda, and other records considered
13 necessary in connection with an internal audit. All final audit
14 reports must be submitted to the board.

15 (3) The board is vested with the exclusive management and control
16 of the chief internal auditor.

17 (C) The department, at its own expense, shall provide appropriate
18 office space within its headquarters, building, and facility service,
19 including janitorial, utility and telephone services, computer and
20 technology services, and related supplies, for the chief internal
21 auditor and his support staff.

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24 SECTION 8. Section 44-1-60(E) and (F) of the 1976 Code, as
25 added by Act 387 of 2006, is amended to read:

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27 “(E)(1) Notice of ~~the~~ a department decision must be sent by
28 certified mail, returned receipt requested to the applicant,
29 permittee, licensee, and affected persons who have ~~asked~~ requested
30 in writing to be notified ~~by certified mail, return receipt requested.~~
31 Affected persons may request in writing to be notified by regular
32 mail or electronic mail in lieu of certified mail. Notice of staff
33 decisions for which a department decision is not required pursuant
34 to subsection (D) must be provided by mail, delivery, or other
35 appropriate means to the applicant, permittee, licensee, and
36 affected persons who have requested in writing to be notified.

37 (2) Except for decisions in which the staff makes a
38 determination regarding the applicability of Section 44-7-160 or a
39 request for exemption under Section 44-7-170, the ~~department~~ staff
40 decision becomes the final agency decision fifteen calendar days
41 after notice of the ~~department~~ staff decision has been mailed to the
42 applicant, unless a written request for final review is filed with the

1 department by the applicant, permittee, licensee, or affected
2 person.

3 (3) Staff decisions in which a determination is made
4 regarding the applicability of Section 44-7-160 or a request for
5 exemption under Section 44-7-170 are the final agency decision
6 and not subject to appeal.

7 (F) No later than sixty calendar days after the date of
8 receipt of a request for final review, a final review conference must
9 be conducted by the appropriate board, its designee, ~~or a~~
10 ~~committee of three members of the board appointed by the chair.~~
11 If the appropriate board declines in writing to schedule a final
12 review conference or if a final review conference is not conducted
13 within sixty calendar days, the department decision becomes the
14 final agency decision, and unless an applicant, permittee, licensee,
15 or affected person may request requests a contested case hearing
16 before the Administrative Law Court, in accordance with the
17 ~~Administrative Procedures Act, within thirty days after the~~
18 ~~deadline for the final review conference.~~ The department shall set
19 the place, date, and time for the conference; give the applicant and
20 affected persons at least ten calendar days' written notice of the
21 conference; and advise the applicant that evidence may be
22 presented at the conference. However, the time period for
23 conducting the final review conference may be extended upon
24 written agreement of all parties or by reasonable continuance
25 granted by the chairman for good cause shown. The final review
26 conference must be held as follows:

27 (1) Final review conferences are open to the public;
28 however, the officers conducting the conference may meet in
29 closed session to deliberate on the evidence presented at the
30 conference. The burden of proof in a conference is upon the
31 moving party. During the course of the final review conference,
32 the department must explain the department decision and the
33 materials relied upon in the administrative record to support the
34 department decision. The applicant or affected party shall state the
35 reasons for protesting the department decision and may provide
36 evidence to support amending, modifying, or rescinding the
37 department decision. The department may rebut information and
38 arguments presented by the applicant or affected party and the
39 applicant or affected party may rebut information and arguments
40 presented by the department. Any final review conference officer
41 may request additional information and may question the applicant
42 or affected party, the department, and anyone else providing
43 information at the conference.

1 (2) After the ~~administrative~~ final review conference, the
2 board, ~~its designee~~, or a committee of three members of the board
3 appointed by the chair shall issue a written final agency decision
4 based upon the evidence presented. The decision may be
5 announced orally at the conclusion of the ~~administrative~~ final
6 review conference or it may be reserved for consideration. The
7 written decision must explain the bases for the decision and inform
8 the parties of their right to request a contested case hearing before
9 the Administrative Law Court. In either event, the written decision
10 must be mailed to the parties no later than thirty calendar days
11 after the date of the ~~administrative~~ final review conference. Within
12 thirty calendar days after the receipt of the decision an applicant,
13 permittee, licensee, or affected person desiring to contest the final
14 agency decision may request a contested case hearing before the
15 Administrative Law Court, in accordance with the Administrative
16 Procedures Act. The court shall give consideration to the
17 provisions of Section 1-23-330 regarding the department's
18 specialized knowledge.

19 (3) Prior to the initiation of the final review conference, an
20 applicant, permittee, licensee, or affected person must be notified
21 of their right to request a transcript of the proceedings of the final
22 review conference. If a transcript is requested, the applicant,
23 permittee, licensee, or affected person making the request ~~must be~~
24 is responsible for all costs.

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26 SECTION 9. Section 44-1-80 of the 1976 Code, as last amended
27 by Act 339 of 2002, is further amended to read:

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29 "Section 44-1-80. (A) The ~~Board~~ Secretary of Health and
30 Environmental Control or ~~its~~ his designated agents must
31 investigate the reported causes of communicable or epidemic
32 disease and must enforce or prescribe these preventive measures as
33 may be needed to suppress or prevent the spread of these diseases
34 by proper quarantine or other measures of prevention, as may be
35 necessary to protect the citizens of the State. The ~~Board~~ Secretary
36 of Health and Environmental Control or ~~its~~ his designated agents
37 shall declare, when the facts justify it, any place as infected and, in
38 case of hydrophobia or other diseases transmitted from animals to
39 man, must declare ~~such~~ the animal or animals quarantined, and
40 must place all ~~such~~ restrictions upon ingress and egress of persons
41 or animals there from as may be, in ~~its~~ their judgment, necessary to
42 prevent the spread of disease from the infected locality.

1 (B)(1) ~~Whenever~~ When the ~~board~~ secretary learns of a case of a
2 reportable illness or health condition, an unusual cluster, or a
3 suspicious event that it reasonably believes has the potential to
4 cause a public health emergency, as defined in Section 44-4-130, ~~it~~
5 he is authorized to notify the appropriate public safety authority,
6 tribal authorities, and federal health and public safety authorities.

7 (2) The sharing of information on reportable illnesses, health
8 conditions, unusual clusters, or suspicious events between
9 authorized personnel must be restricted to information necessary
10 for the treatment, control, investigation, and prevention of a public
11 health emergency. Restriction of access to this information to
12 those authorized personnel for the protection of public health
13 ensures compliance with all state and federal health information
14 privacy laws.

15 (3) The ~~board~~ secretary and ~~its~~ his agents must have full
16 access to medical records and nonmedical records when necessary
17 to investigate the causes, character, and means of preventing the
18 spread of a qualifying health event or public health emergency.
19 For purposes of this item, ‘nonmedical records’ mean records of
20 entities, including businesses, health facilities, and pharmacies,
21 which are needed to adequately identify and locate persons
22 believed to have been potentially exposed or known to have been
23 infected with a contagious disease.

24 (4) An order of the ~~board~~ secretary given to effectuate the
25 purposes of this subsection is enforceable immediately by the
26 public safety authority.

27 (5) For purposes of this subsection, the terms qualifying
28 health event, public health emergency, and public safety authority
29 have the same meanings as provided in Section 44-4-130.”

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32 SECTION 10. Section 44-1-90 of the 1976 Code is amended to
33 read:

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35 “Section 44-1-90. The ~~State Board~~ Secretary of Health and
36 Environmental Control or ~~its~~ his designated agents, when it is
37 deemed necessary by the municipal officers of ~~any~~ a town or city
38 or the governing body of ~~any~~ a county, may:

39 ~~(a)~~ (1) visit cities, towns, villages or localities where disease is
40 prevalent or threatened;

41 ~~(b)~~ (2) investigate and advise with the local authorities or
42 persons as to ~~such~~ measures as that may tend to prevent the spread

1 of disease or to remove or abate causes that may tend to cause or
2 intensify disease;
3 ~~(e)~~(3) advise, when practicable or possible, as to measures of
4 sanitation or hygiene; and
5 ~~(d)~~(4) investigate and advise as to all matters respecting water
6 supply, sewage, drainage, ventilation, heating, lighting, or other
7 measures connected with public sanitation or safety.”

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10 SECTION 11. Section 44-1-100 of the 1976 Code, as last
11 amended by Act 339 of 2002, is further amended to read:

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13 “Section 44-1-100. All sheriffs and constables in the several
14 counties of this State and police officers and health officers of
15 cities and towns must aid and assist the ~~Director of the Department~~
16 Secretary of Health and Environmental Control and must carry out
17 and obey his orders, or those of the Department of Health and
18 Environmental Control, to enforce and carry out any and all
19 restrictive measures and quarantine regulations that may be
20 prescribed. During a state of public health emergency, as defined
21 in Section 44-4-130, the ~~director~~ secretary may request assistance
22 in enforcing orders issued pursuant to this chapter and pursuant to
23 Chapter 4, Title 44, from the public safety authority, as defined in
24 Section 44-4-130, other state law enforcement authorities, and
25 local law enforcement. The public safety authority may request
26 assistance from the South Carolina National Guard in enforcing
27 orders made pursuant to this chapter or pursuant to Chapter 4, Title
28 44.”

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31 SECTION 12. Sections 1-30-45, 44-1-70, 44-1-280 and 48-1-20
32 of the 1976 Code are repealed.

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35 SECTION 13. References in the 1976 Code to the “director” and
36 the “board” that refer to the chief administrative officer of the
37 Department of Health and Environmental Control, mean the
38 “Secretary of the Department of Health and Environmental
39 Control” or “secretary”, as appropriate. The Code Commission
40 shall change references in the 1976 Code to conform to this act,
41 and such changes must be included in the next printing of
42 replacement volumes or cumulative supplements.

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SECTION 14. The repeal or amendment by this act of any law, whether temporary or permanent or civil or criminal, does not affect pending actions, rights, duties, or liabilities founded thereon, or alter, discharge, release or extinguish any penalty, forfeiture, or liability incurred under the repealed or amended law, unless the repealed or amended provision shall so expressly provide. After the effective date of this act, all laws repealed or amended by this act must be taken and treated as remaining in full force and effect for the purpose of sustaining any pending or vested right, civil action, special proceeding, criminal prosecution, or appeal existing as of the effective date of this act, and for the enforcement of rights, duties, penalties, forfeitures, and liabilities as they stood under the repealed or amended laws.

SECTION 15. If any section, subsection, paragraph, subparagraph, sentence, clause, phrase, or word of this act is for any reason held to be unconstitutional or invalid, such holding shall not affect the constitutionality or validity of the remaining portions of this act, the General Assembly hereby declaring that it would have passed this act, and each and every section, subsection, paragraph, subparagraph, sentence, clause, phrase, and word thereof, irrespective of the fact that any one or more other sections, subsections, paragraphs, subparagraphs, sentences, clauses, phrases, or words hereof may be declared to be unconstitutional, invalid, or otherwise ineffective.

SECTION 16. This act takes effect January 12, 2011 and applies to any actions pending on or after the effective date of the act. No pending or vested right, civil action, special proceeding, or appeal of a final administrative decision exists under the former law as of the effective date of this act. For all actions pending on the effective date of this act, the action proceeds as provided in this act for review.

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